

THE YESHIVA PIRCHEI SHOSHANIM SHULCHAN ARUCH PROJECT

The Noahide Laws - Lesson Forty-Eight



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Lifecycle XI: Inheritance

Lesson

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Introduction

In our time on this Earth we tend to accumulate a lot of stuff (in fact, we usually end up with more than we could ever need!) In death, however, our ownership of all things material ceases. The only possessions accompanying us into the afterlife are our *mitzvos* – our fulfillments of God’s will. Ultimately, all material possessions and wealth have very little meaning.

It is unfortunately very common that, when a loved one dies, their death results in a “battle for stuff,” creating strife and disagreement over who inherits the deceased’s estate. In the midst of these conflicts everyone seems to miss the greater point: no matter who gets the inheritance, it won’t be theirs for long. Eventually, everyone dies and, as the Yiddish expression goes, shrouds have no pockets.

The Torah is very concerned with the details of inheritance. The Talmud and later scholars devote much labor to clarifying the details of inheritance. In this lesson we will look at the general principles of inheritance as they apply to Noahides.

Avraham & Eliezer

Before getting into things in detail, we need to first note the following passages in the Torah and Talmud:

After these incidents, the word of the Lord came to Abram in a vision, saying, “Do not fear, Abram, for I am your Shield; your reward is exceedingly great.” And Abram said, “O Lord God, what will You give me? I am going childless and the steward of my household is Eliezer of Damascus!” And behold, Abram said “Behold, You have given me no offspring and one of my

household will inherit me.” And, behold, the word of the Lord came to him, saying: “This man shall not inherit you; only one that shall come forth from within you shall be your heir.”¹

The commentaries explain that Abram was uncertain about God’s promise of material reward. Knowing the vanity of such things, Abram saw little point considering that he had no heir to whom to pass anything. The best he could do, said Abram, was to leave everything to Eliezer, the head of his household. God replies and assures Abram that he will have offspring to inherit his estate.

However, Abram’s complaint is strange. After all, he had other relatives. Why couldn’t his nephew, Lot, inherit him? What about Abram’s brothers? The *Kovetz Haaros*² and *Kovetz Shiurim*³ both point out that Abram did not consider these other relatives as his natural heirs; he only considered his offspring as natural heirs.

Talmud, Kiddushin 17b to 18a

An indentured servant’s period of servitude ends in the *shemitta* (remission) year. However, a servant who does not desire his freedom and, instead, wishes to instead remain a servant must serve his master until the *Yovel* (Jubilee) year.

The Torah records the details in the following verses:

*If you purchase a Jewish servant, he shall serve for six years and go completely free in the seventh year... But if the servant says: “I love my master... I will not go out free,” then his master shall bring him before God, to the door or door-post, and his master shall bore his ear through with an awl; he shall then serve him **forever**.⁴*

The Talmud and Torah commentaries explain that “forever” here means until the end of the Jubilee cycle.

In Kiddushin 17b to 18a the Talmud discusses the sale of such a bound servant to a Non-Jew. The Talmud notes that although the servant’s commitment becomes the property of the Non-Jew, it cannot be inherited by the Non-Jew’s children.

¹ Gen 15.

² 64:3.

³ Bava Basra 358.

⁴ Exodus 21:2-6.

The source, says the Talmud is:

And he shall calculate with him who bought him from the year that he sold himself to him until the year of jubilee; and the price of his sale shall be according unto the number of years; according to the time of a hired servant shall he be with him.⁵

The Talmud points out that the servant's servitude is only between his master and the indentured servant. If the master dies, then the agreement of servitude does not pass to the master's heirs. In the course of this discussion, however, Rava Raises an interesting point:

From the fact that the Torah needed to teach that a Non-Jew does not inherit his father's servant, we see that a Non-Jew inherits his father on a biblical level.

In other words, when a Non-Jew dies his possessions are not entirely ownerless. Rather, they pass to the owner's children. Therefore, the Talmud had to teach the exception of an indentured servant. According to the Talmud, there are two sources for this law:

1. *...I will not give you of their land, no, not so much as for the sole of the foot to tread on; because **I have given mount Seir unto Esau for an inheritance.**⁶*
2. *And the Lord said unto me: 'Be not at enmity with Moab, neither contend with them in battle; for I will not give thee of his land for a possession; because **I have given Ar unto the children of Lot for an inheritance.**'⁷*

These verses both demonstrate the concept of inheritance from parents to children. The Talmud's derivation is further bolstered by the aforementioned incident with Abram.

Who Inherits?

Although the story of Abram clearly implies that only children have a right of inheritance, this learning is not reflected in later writings. For example, Maimonides writes:

⁵ Lev. 25:50.

⁶ Deut. 2:5.

⁷ Deut. 2:9

*According to Scriptural Law, a gentile inherits his father's estate. With regard to other inheritances, we allow them to follow their own customs.*⁸

According to Maimonides, only children inherit their father's estate. In all other situations, Noahides should follow the customs of their lands and laws. For example, if a woman dies without any children, then her estate is divided according to the probate law of the land.

The Meiri,⁹ however, has an entirely different understanding than Maimonides. He writes that a son and all other immediate family members inherit the deceased's property.

Rav Shlomo Zalman Auerbach z"l,¹⁰ based on the *Chidushei HaRitva*, offers a very deep analysis of the entire question of inheritance that brings the opinions of Maimonides and the Meiri into greater focus. Let's start with a question: When a person dies, what is the status of his property? Absent any concept of inheritance, the property is *hefker*, ownerless. If it is *hefker*, than anyone can freely take it and their actions are not considered theft.

Yet, the Torah tells us that this is not so. When a person dies, the ownership of his property transfers automatically to another party. If another takes this property he commits theft.

According to the Meiri, ownership of the deceased's property passes to his immediate family. The exact division and of who-gets-what is entirely the result of law and social custom. However, the Meiri holds that these customs have the force of biblical law. Therefore, if someone steals from the deceased's possessions, he is liable for theft on a biblical level!

Maimonides holds that a son automatically inherits and that this right cannot be mitigated by custom. It is only in the absence of a son that the division of property among the remaining relatives is (as the Meiri holds) determined by custom.¹¹

The *Halacha*, practice, is like Maimonides.¹²

⁸ *Hilchos Nachalos* 6:9.

⁹ To Kiddushin *ibid*. In previous lessons we mentioned that the validity of the Meiri as a practical halachic source is a complicated issue.

¹⁰ *Minchas Shlomo* 86.

¹¹ The *Minchas Chinuch* 400, however, has a different understanding of Maimonides.

¹² See *Chochom Sofer* YD 127; *Minchas Shlomo* *Ibid*.; *Pri Yitzchok* II:60; many others.

Sons or Daughters?

The *Minchas Chinuch* and others¹³ write that a son inherits his father's estate. Should we understand their use of the Hebrew term "son" as limiting inheritance to the son only? Or, perhaps their use of "son" is non-specific and daughters also inherit from their father. *Tosafos*¹⁴ appears to hold that, when there is a son, no one else inherits the father; not even a daughter.

The *Kovetz Haaros*¹⁵ and *Kovetz Shiurim*¹⁶ point out that, in the aforementioned conversation between God and Abram, Abram only complains that he has no offspring to inherit him. He makes no distinction between sons and daughters.¹⁷ Therefore, the *Kovetz* holds that they both inherit. Later authorities appear to agree that the *Halacha* is sons and daughters both inherit their fathers.

Equal Inheritances?

While sons and daughters inherit from their father, do they receive equal portions? Jewish law dictates that the son's inheritance takes precedence. This is learned from the following verse:

*And you shall speak unto the children of Israel, saying: If a man dies and has no son, then you shall cause his inheritance to pass to his daughter.*¹⁸

Do these rules also apply to Noahides? The answer appears to be "no." After all, this verse was never commanded to Noahides!

¹³ See *Pri Yitzchok* II:60.

¹⁴ Bava Basra 115b *d.h. Melamed* as analyzed in the *Kovetz Shiurim*, Bava Basra 357.

¹⁵ 64:3.

¹⁶ Bava Basra 358

¹⁷ The *Chavatzeles HaSharon* 468 discusses this issue at length and finds the *Kovetz* to be a compelling proof. Note that the passage in Genesis 15 goes out of its way to avoid any gender distinction.

¹⁸ Numbers 27:8.

Rashi to Yevamos 62a¹⁹ writes there is no distinction between a son and a daughter for the sake of Noahide inheritance. This approach is echoed in the later commentaries as well.²⁰ It must be noted that there are a number of possible differences between the inheritances of sons and daughters that remain unclear.

Basic Summary So Far

We will discuss the practical ramifications of this lesson in the live class. However, the basic takeaway is as follows:

- When a person dies intestate, his estate automatically passes to his sons and daughters according to Torah law.
- His estate should be divided equally between his sons and daughters.
- If a person has no children, he may divide his estate as he wishes or allow it to be divided according to the probate laws of his country.

Havaras Nachala

The Torah's requirements for inheritance constitute a *mitzvah*. Correspondingly, one who circumnavigates the Torah's obligations commits an *aveira*, a sin, of *bavaras nachala* – disrupting the order of inheritance²¹ (admittedly, further study is needed as to the exact severity of and scope of this prohibition for Noahides.)²² Therefore, should not completely disinherit a Torah-designated heir.

¹⁹ *D.h. Nakbrisan*.

²⁰ See *Toldos Noach* 13:20 and *Matza Chein* 13:27. Though most later Acharonim equate sons and daughters for inheritance, there are many minor details in which there is much uncertainty.

²¹ *Mishnah* Bava Basra 133b; *Teshuvos HaRosb* 85:2; *Kenesses HaGedolah* CM 282:2.

²² Its exact application for Jews is often unclear. Some limit this transgression to real estate bequests. See *Sdei Chemed Maareches Lamed* 3:11.

Most authorities note that one transgresses this *aveira*, sin, even by intentionally diminishing his estate in his lifetime in order to lessen the inheritance of rightful heirs. Therefore, *inter vivos* gifts (“lifetime bequests”) are ideal.²³

All Torah authorities agree that, even though *havaras nachala* is prohibited, a will or bequest that does so remains valid.²⁴

Mitigating Factors

In many families, there are complex dynamics and concerns that affect how one may wish to have his estate divided upon his death. When such factors exist, it is possible to make special arrangements for one’s estate without shirking the Torah obligations of inheritance.

Partial vs. Complete Disinheritance

According to the majority of *poskim*, the issue of *havaras nachala* is, for Jews, only when one completely disinherits a Torah-designated heir. However, partial distributions between Torah-designated and “outside” heirs are permitted when there are mitigating concerns. This understanding has been relied upon for centuries in the Jewish world and is a foundation of Torah-observant estate planning. The same principle appears to apply to Noahides.

The Amounts of Partial Distributions

According to the *risbonim*, partial distributions are permitted as long as the testator leaves “four *זוז*” (a Talmudic currency) to his Torah-designated heirs.²⁵ As long as that amount has been ensured, the remainder of the estate may be divided as one chooses. What is “four *זוז*”? Translating ancient measurements into modern currency is very tricky. There are many ways of doing these calculations, all of which reach different answers. Rav Moshe Feinstein, *זוֹז*²⁶ explains that the four *זוז* measurement is not exact – rather it only means to indicate a significant portion of one’s estate.²⁶ According to Rav Moshe, either of the following is sufficient:

- **Portion of the Estate** – What constitutes “a significant portion” varies from place to place and estate to estate. 1/5 of one’s estate, however,

²³ See *Pischei Choshen*, *Yerusha* 4:2.

²⁴ *Choshen Mishpat* 282.

²⁵ *Shu”t Tashbetz* III:147; *Maharshal* 49. See further *Avkas Rochel* 92; *Taz Even HaEzer* 113:1; *Ketzos HaChoshen* CM 282:2; *Birkey Yosef* YD 249:15.

²⁶ *Igras Moshe*, *Choshen Mishpat* II:50.

should be enough to satisfy this requirement.²⁷

- **Actual Monetary Amount** – If we assume that the “four זוז” is a firm amount, then we must realize that there are many ways to calculate it. \$1000 would cover most all possibilities.²⁸
- **Real Estate** – Leaving one’s house or residence to halachic heirs is also sufficient and considered enough.²⁹

There is no requirement to choose the largest of these amounts; rather one should choose what is appropriate for the situation. Once one of these amounts has been left to the Torah-designated heirs, the remaining estate may be divided as needed.

Practical Examples of Partial Inheritance

Common situations where one may want to use a partial distribution are:

- **A spouse** – If one has a spouse and children, then by Torah law his children inherit his entire estate. However, if one is concerned for the welfare of his spouse then he may leave the “four זוז” equivalent to his children and the rest of his estate to his wife.
- **Adopted vs. biological children** – The Torah obligation is to one’s biological children. Under Torah law, adopted children have no automatic entitlement to inheritance. As long as one leaves at least “four זוז” to his biological children, the remainder of his estate may be left to his adopted children.
- **Children vs. Grandchildren** – One may leave his biological children one of the amounts mentioned above, and leave the rest to his grandchildren if needed.

²⁷ *Igros Moshe, Choshen Mishpat II:49.*

²⁸ *Igros Moshe, Choshen Mishpat II:50.*

²⁹ *Igros Moshe, Even HaEzer I:110.*

Summary of the Lesson

1. The Torah provides extensive laws of inheritance for Jews.
2. The Talmud explains that the mechanism of inheritance, that property passes from the deceased to the living (although by logic it should become ownerless), applies to Noahides as well.
3. The commentaries discuss whether the ownership of the Non-Jew's property passes to all of his immediate family or only to his children. The *Halacha* appears to be like Maimonides that ownership passes to one's children.
4. Inheritance appears to pass to sons and daughters equally.
5. It is advisable that Noahides draft a will that is both *Halachically* and legally valid.